

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1412

GEORGE ECONOMOU

vs.

CHAUNCEY B. WOOD.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, George Economou, appeals from a Superior Court judgment dismissing his complaint against the defendant, Chauncey B. Wood, his former attorney, pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974). On appeal, Economou alleges that the motion judge misapplied the discovery rule for purposes of calculating the statutes of limitations for his claims against Wood. We affirm.

Standard of review. "We review an order on a motion to dismiss de novo." A.L. Prime Energy Consultant, Inc. v. Massachusetts Bay Transp. Auth., 479 Mass. 419, 424 (2018). We take all allegations of the complaint as true, and draw reasonable inferences in the plaintiff's favor. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 625 n.7 (2008). "The ultimate inquiry is whether the plaintiffs alleged such facts, adequately

detailed, so as to plausibly suggest an entitlement to relief." Greenleaf Arms Realty Trust I, LLC v. New Boston Fund, Inc., 81 Mass. App. Ct. 282, 288 (2012).

Discussion. Economou's complaint included claims of legal malpractice, negligence, fraud, misrepresentation, race and nationality discrimination, ineffective assistance of counsel, and emotional distress. All of Economou's claims have a three-year statute of limitations, except for his claim under G. L. c. 93A, which has a four-year statute of limitations. See G. L. c. 260, § 2A (three-year statute of limitations for tort and breach of contract actions); G. L. c. 260, § 4 (three-year statute of limitations for legal malpractice actions); G. L. c. 260, § 5A (four-year statute of limitations for G. L. c. 93A claim); G. L. c. 260, § 5B (three-year statute of limitations for civil rights claims).

The cause of action for a tort generally accrues at the time of injury. See Koe v. Mercer, 450 Mass. 97, 101 (2007). Nevertheless, the Supreme Judicial Court has "recogniz[ed] the unfairness of a rule that allows statutes of limitation to run even before a plaintiff knew or reasonably should have known that [he] may have been harmed," and adopted the "discovery rule" to help "determin[e] when a cause of action accrues, and thus when the statute of limitations starts to run" (quotation and citation omitted). Commonwealth v. Tradition (N. Am.) Inc.,

91 Mass. App. Ct. 63, 70-71 (2017). "Under the discovery rule, the limitation period accrues when the plaintiff has 'sufficient notice of two related facts: (1) that [he] was harmed; and (2) that [the] harm was caused by the defendant's conduct.'" Id. at 71, quoting Harrington v. Costello, 467 Mass. 720, 725 (2014). The discovery rule does not require actual notice, and "[a] plaintiff may be put on 'inquiry notice' where [he is] informed of facts that would suggest to a reasonably prudent person in the same position that an injury has been suffered as a result of the defendant's conduct." Tradition (N. Am.) Inc., supra. In claims involving legal malpractice,

"it is not necessary that the plaintiff client know the full extent of harm or loss or know precisely in what manner and what harmful after-effects flow from the alleged malpractice; rather, [o]nce a client or former client knows or reasonably should know that he or she has sustained appreciable harm as a result of the lawyer's conduct, the statute of limitations starts to run" (quotation and citation omitted).

Frankston v. Denniston, 74 Mass. App. Ct. 366, 374 (2009).

"Appreciable harm" encompasses "injury, loss or detriment that is capable of being measured or perceived," such as "incurring . . . legal expenses" (quotation and citation omitted). Id. Incurring legal expenses "activate[s] a duty of inquiry by the client into the issue or problem underlying the potential legal error or omission and . . . commence[s] the running of the legal malpractice statute of limitations." Id. at 375.

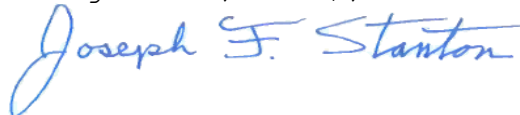
Here, Economou argues that the statutes of limitations for his claims did not begin to run until January 2015, when he became aware of "numerous wrongs" by Wood after reading an appellate brief written by his new attorney. As the judge found however, on February 22, 2013, Economou sent Wood a letter expressing his belief that Wood had overcharged him for legal work.¹ The statutes of limitations on all of Economou's claims began running as of the date of that letter, because Economou "kn[e]w that he . . . ha[d] sustained appreciable harm as a result of" the charges, and knew that Wood was responsible for those overcharges. Frankston, 74 Mass. App. Ct. at 374. See Tradition (N. Am.) Inc., 91 Mass. App. at 70-71. Similarly, although Economou contends a language barrier prevented him from understanding the legal harm that Wood caused, Economou's February 22 letter stipulated that Economou "review[ed] all of the related documents" and criticized Wood for not reviewing pertinent documents and pursuing specific legal strategies in his case. Economou's letter strongly suggested that he was aware of at least some of Wood's legal "wrongs" as of February 2013, meaning, once again, that the statutory periods began running at that time. See id. at 71.

¹ The judge considered Economou's February 22, 2013 letter because Economou appended the letter to his complaint. See Mass. R. Civ. P. 10 (c), as amended, 456 Mass. 1401 (2010).

Given Economou's awareness of the harm that Wood created as of February 2013, the judge correctly concluded that the statute of limitations expired in February 2017 for Economou's c. 93A claim, and in February 2016 for his other claims. See G. L. c. 260, §§ 2A, 4, 5A, 5B; Tradition (N. Am.) Inc., 91 Mass. App. at 70-71; Frankston, 74 Mass. App. Ct. at 374. Economou did not file his complaint until June 2017, four months past the statutory deadline for his c. 93A claim, and sixteen months past the statutory deadline for his other claims. See G. L. c. 260, §§ 2A, 4, 5A, 5B. Accordingly, we discern no error in the judge's dismissal of his complaint.

Judgment affirmed.

By the Court (Maldonado,
McDonough &
Englander, JJ.²),



Clerk

Entered: June 11, 2019.

² The panelists are listed in order of seniority.